



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE

STATE OF CALIFORNIA

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In the Matter of the Application of SOUTHERN )  
CALIFORNIA EDISON COMPANY (U 338-E) )  
for a Certificate of Public Convenience and )  
Necessity Concerning the Devers-Palo Verde )  
No. 2 Transmission Line Project. )  
\_\_\_\_\_ )

Application No. 05-04-015  
(Filed April 11, 2005)

**OPENING BRIEF OF THE SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E)**  
**ON PHASE 2 ISSUES ON THE DEVERS-PALO VERDE NO. 2**  
**TRANSMISSION LINE PROJECT**

MICHAEL D. MACKNESS  
JULIE A. MILLER

Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770  
Telephone: (626) 302-4017  
Facsimile: (626) 302-2610  
E-mail: [julie.miller@sce.com](mailto:julie.miller@sce.com)

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## **SUMMARY OF RECOMMENDATIONS**

### **(RULE 13.11)**

The Commission should grant SCE's Application for a Certificate of Public Convenience and Necessity for the Devers Palo Verde No. 2 Project ("DPV2") and find that:

1. SCE is authorized to construct DPV2, a 230-mile 500 kV transmission line between California and Arizona from SCE's existing Devers Substation near Palm Springs, California, to either Harquahala Switchyard or the proposed Harquahala Junction near Phoenix, Arizona. SCE is also authorized to build a new 41.6-mile, 500 kV line following the existing SCE Devers-Valley No. 1 500 kV transmission corridor.
2. The DPV2 project is needed because it will increase California's transmission import capability by 1,200 MW providing greater access to sources of low-cost energy currently operating in the Southwest.
3. There is substantial evidence that DPV2 provides economic and other benefits that warrant its construction.
4. DPV2 will provide economic benefits for California electricity customers as demonstrated by the independent economic analyses performed by SCE and DRA. The CAISO conducted an independent review of DPV2 and found the DPV2 project to be a necessary and cost-effective addition to the CAISO controlled grid.
5. DPV2 is needed because it will increase California's transmission import capability by 1,200 MW, providing greater access to sources of low-cost energy currently operating in the Southwest.
6. DPV2 is needed because it will enhance competition amongst energy suppliers by increasing access to the California energy market, providing siting incentives for future energy suppliers, and providing additional import capability.
7. DPV2 would expand the Western Electricity Coordinating Council interstate regional transmission network and would increase the ability for California and the Southwest to pool resources, and provide emergency support in the event of generating unit outages or natural disasters.
8. DPV2 would improve the reliability of the regional transmission system, providing insurance against major outages such as the loss of a major generating facility or of another high-voltage transmission line.
9. DPV2 will parallel existing transmission lines minimizing the need for new access roads and associated ground disturbing impacts.

10. SCE shall build the project in accordance with the following route:

SCE's proposed DPV2 route would depart from either the Harquahala Switchyard or the proposed Harquahala Junction. If it departs from the Harquahala Switchyard, it would proceed easterly paralleling the existing Harquahala-Hassayampa 500 kV line for approximately five miles to its intersection with SCE's existing DPV1 route at the site of the proposed Harquahala Junction. At this point, whether the route departs from the Harquahala Switchyard or Harquahala Junction the route would be the same. The route would then turn north and parallel the DPV1 line approximately 2.7 miles where it crosses I-10 and proceeds to a point 1 mile north of Burnt Mountain. The route then turns westerly, then southwesterly, and parallels DPV1 and to a point about 25 miles where it meets the El Paso Natural Gas Company's ("EPNG") existing pipeline. At this point, the route generally parallels the EPNG pipeline and DPV1 line across the Ranegras Plain, the KOFA National Wildlife Reserve, La Posa Plain, Arizona Highway 95, through the Dome rock Mountain to the summit of Copper Bottom Pass. The route then turns southwesterly and descends the western slope of the Dome Rock Mountains on 13 double-circuit towers and proceeds to a crossing of the Colorado River.

Upon crossing the Colorado River, the route leaves enters California and passes into the Palo Verde Valley, five miles south of Blythe, California. The route parallels the DPV1 line westerly to the top of the Palo Verde Mesa and then proceeds northwesterly to a point two miles south of I-10 and five miles southwest of Blythe Airport. At this point, the route proceeds westerly and parallel to I-10 and the DPV1 line including crossing or going around Alligator Rock Areas of Critical Environmental Concern ("ACEC") about 63 miles to a point in Shavers Valley where it turns northerly and crosses I-10 about two miles east of the Cactus City Rest Stop. After crossing I-10, the route parallels the DPV1 line for the remaining 46 miles to the Devers Substation.

The route would leave the Devers Substation in a westerly direction paralleling SCE's existing Devers-Valley No. 1 line. The route would cross into the San Bernardino National Forest and the Santa Rosa and San Jacinto Mountains National Monument and generally parallel the Devers-Valley No. 1 line westerly until it terminates at SCE's Valley Substation.

11. It is reasonable to allow SCE to determine which option at Harquahala Junction or Harquahala Switchyard to use. The Commission will allow SCE to determine whether to terminate DPV2 at either Harquahala Junction or Harquahala Switchyard.
12. It is reasonable to allow SCE to determine which option, crossing Alligator Rock ACEC, or going around Alligator Rock ACEC, to use in order to allow SCE to comply the orders of other State and Federal Agencies. The Commission will allow SCE to determine whether to cross Alligator Rock ACEC or to use an alternate route going around Alligator Rock that approved by the U.S. Department of the Interior, Bureau of Land Management ("BLM").
13. SCE shall build DPV2 in accordance with its preliminary electric and magnetic field studies.

14. Pursuant to Pub. Util. Code Section 1005.5(a), the maximum cost determined to be reasonable and prudent is determined to be \$589.299 million (sum of real (2005 dollars) capital costs (with AFUDC, P&B and A&G)) or \$625,139 million (2005 present value of revenue requirements). This estimate is subject to modification as follows. In the event that it is determined that SCE must route DPV2 around Alligator Rock ACEC, the maximum cost shall be increased by \$8.952 million [sum of real (2005 dollars) capital costs (with AFUDC, P&B and A&G)]. Once SCE has developed a final detailed design-based construction estimate for the route adopted by the Commission and other agencies, and the mitigation requirements adopted by the Commission and other agencies, SCE shall provide the revised cost-estimate to the Commission. The final engineering design, environmental mitigation requirements, and other factors may be used by the Commission to modify the maximum cost per Pub. Util. Code § 1005(b).

15. The Commission authorizes SCE to seek adjustments based on changes in cost estimates, once SCE completes final, detailed design-based construction estimates due to:

- a. adjustments in project costs because of any unanticipated delays in starting the project or inflation;
- b. adjustments in project costs as a result of final design criteria; and
- c. additional project costs resulting from the adopted mitigation measures (and mitigation monitoring programs).

16. The Commission has reviewed and considered the information in the FEIR before approving the project.

17. SCE does not believe DPV2 has significant and unmitigable environmental impacts. The environmental mitigation measures identified in the FEIR, as modified by the Commission in the CPCN order, will avoid significant environmental impacts. However, if the Commission determines that there are such effects, the Commission should include a Statement of Overriding Considerations. SCE provides suggested language in Appendix B.



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**TRANSMISSION LINE PROJECT**

Pursuant to Rule 13.11 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure and the Assigned Administrative Law Judge’s (“ALJ”) July 10, 2006 instructions, as modified on September 20, 2006,<sup>1</sup> Southern California Edison Company (“SCE”) respectfully submits its opening brief on Phase 2 issues on the Devers-Palo Verde No. 2 (“DPV2”) transmission line project. The evidence presented at the hearings in Phase 1 and Phase 2 demonstrates that the public convenience and necessity requires DPV2. The Commission should now issue a Certificate of Public Convenience and Necessity (“CPCN”) authorizing SCE to construct DPV2.

**I.**

**INTRODUCTION**

SCE seeks a CPCN authorizing it to construct DPV2, a 230-mile, 500 kilovolt (“kV”) alternating current transmission line between California and Arizona. DPV2 would connect SCE’s Devers Substation near Palm Springs, California, to either Harquahala Generating

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<sup>1</sup> On October 31, 2006, ALJ TerKeurst issued a ruling stating that Opening Briefs were due on November 6, 2006.

Company (“HGC”) switchyard (“Harquahala Switchyard”) or a new Harquahala Junction switchyard (“Harquahala Junction”), west of Phoenix, Arizona. SCE would also build a new 41.6-mile, 500 kV line following the existing SCE Devers-Valley No. 1 500 kV transmission corridor (“Devers-Valley No. 2”).<sup>2</sup>

On July 10, 2005, the Commission held Phase 2 evidentiary hearings on environmental, routing and other issues. No party disputed SCE’s testimony through rebuttal testimony or cross-examination. The active parties agreed that the public necessity requires DPV2. SCE summarized the evidence demonstrating the economic need for the DPV2 project in its Phase 1 briefs. The Utility Reform Network (“TURN”),<sup>3</sup> the Division of Ratepayer Advocates (“DRA”),<sup>4</sup> and the California Independent System Operator (“CAISO”)<sup>5</sup> are calling DPV2 a clear winner for ratepayers.

No party has challenged the testimony provided by SCE either through testimony, or by cross-examination in Phase 2 hearings. For this reason, SCE’s Opening Brief does not address factual disputes or issues between the parties. SCE addresses the following areas, as it may be helpful to the Commission’s decision-making process below, viz.:

- Proposed Route and Alternatives:
  - The Commission should allow SCE to determine whether to use Harquahala Junction or Harquahala Switchyard

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<sup>2</sup> SCE’s CPCN Application proposed upgrades to four of SCE’s 230 kV transmission lines within California. The Commission and the U.S. Department of the Interior, Bureau of Land Management (“BLM”) issued a Joint Draft EIR/EIS that evaluated an alternate route that would require a new 500 kV transmission line from the Devers Substation to the Valley Substation. SCE has concluded that the West of Devers upgrades are not feasible and the Devers-Valley No. 2 Alternative is an acceptable and viable alternative.

<sup>3</sup> TURN, Phase 1, Opening Brief, p. 1 (“TURN agrees with what is essentially the consensus view of the parties that the proposed DPV2 project is likely to be a cost-effective investment for ratepayers. The Commission can make such a finding here with considerable comfort, given that the economics of the project have undergone substantial review by several different parties using different methods and all have reached effectively the same conclusion.”).

<sup>4</sup> DRA, Phase 1, Opening Brief, p. 1 (“DRA recommends that the Commission grant the CPCN, as the DPV2 project likely will be a cost-effective investment for ratepayers.”).

<sup>5</sup> The CAISO estimated that the benefits from DPV2 will exceed its costs under a wide variety of future system conditions and that the expected benefit-cost ratio (“BCR”) comfortably ranges from 1.2 to 3.2. In fact, Mr. Florio, witness for TURN, expressed greater confidence in the CAISO’s analysis reflecting a BCR of 3.2, making the line ‘a pretty clear winner for ratepayers’.

- If and when an agreement on the on the Desert Southwest Transmission Project is reached, SCE will provide the details to the Commission and comply with General Order 131-D
- If an agreement is reached with the Allottee, SCE will coordinate and cooperate with the Agua Caliente Planning Department
- The Commission should allow SCE the flexibility to construct DPV2 either around, or though, Alligator Rock Areas of Environmental Concern
- The Commission should adopt the Devers-Valley No. 2 alternate
- Environmental Analysis and Mitigation Measures:
  - The Commission should not require SCE to relocate residences for corona noise
  - The Commission should modify the Raven Control Mitigation Measure to require SCE to contribute to an agency sponsored control plan, rather than trying to remove control ravens that nest on the towers of all transmission line companies.
- Electric and Magnetic Field (“EMF”) Issues -- The Commission should find that DPV2 Will Comply with D.06-01-042, the Commission’s recent policy decision on EMF.
- The Commission should find that SCE complied with Pub. Util. Code § 625.
- Project Costs -- The Commission’s maximum reasonable and prudent costs estimates should reflect SCE’s costs estimates and should be subject to adjustment per Pub. Util. Code § 1005.5(b).

The evidentiary record contains substantial evidence supporting a Commission decision that will allow SCE to construct DPV2. In this case, the CAISO determined that DPV2 a cost-effective and necessary addition to the CAISO grid. The active parties participating presented extensive testimony and economic analyses in the Commission’s evidentiary hearings

that DPV2 is cost-effective and should be constructed. SCE appreciates the efforts made by all the active parties in this proceeding to cooperate and to support and streamline the licensing processes for this project. The Commission should now issue a CPCN authorizing SCE to construct DPV2.

## II.

### **PROCEDURAL SUMMARY**

Two different regulatory schemes define this Commission's responsibilities in reviewing SCE's request for approval of this application: (1) Pub. Util. Code § 1001 et seq., requires that the Commission must determine that DPV2 is "needed", i.e., that the present or future public convenience and necessity requires, or will require, construction of the project; and (2) Pub. Resources Code § 21000 et seq. ("CEQA") requires that the Commission, as lead agency for this project, must prepare and certify the Final Environmental Impact Report ("FEIR") assessing the environmental implications of the project.<sup>6</sup>

The CEQA requires the preparation of FEIR when there is substantial evidence that a project may have a significant effect on the environment. The Commission must identify significant and potentially significant environmental impacts expected to result from the Proposed Project, and the mitigation measures, which if adopted, could avoid or lessen those impacts. The FEIR will be used by the Commission, in conjunction with other information developed in the Commission's processes on the CPCN, to act on SCE's Application for a CPCN.

The Commission as lead agency under the CEQA and the BLM as lead agency under the National Environmental Policy Act ("NEPA"), prepared the Final Environmental Impact Report/Environmental Impact Statement (hereinafter, referred to as "FEIR"), contained in Exhibits 40, 41, and 42.

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<sup>6</sup> Re Southern California Edison Company, D.90-09-059, 37 CPUC 2d 413, 421 (1990).

Exhibit 40, FEIR Table ES-1, at pp. ES-74 to ES-75, contains the FEIR’s “Summary of Significant but Unmitigable (Class 1) Impacts for the Proposed Project”. Although SCE believes that there are no significant but unmitigable impacts, if the Commission determines that there are significant but unmitigable impacts, then SCE includes a suggested Statement of Overriding Consideration in Attachment B, explaining why the project should still be approved by the Commission.

**A. Procedural History: Project Need**

On April 7, 2004, SCE sent a report to the CAISO analyzing the cost-effectiveness of DPV2. On February 24, 2005, CAISO issued a Board report stating that: “We estimate that benefits from the line will exceed its costs under a wide range of future conditions.”<sup>7</sup>

On April 11, 2005, SCE filed a CPCN application for DPV2. On August 26, 2005, the Assigned Commissioner issued a Ruling and Scoping Memo (“ACR”) establishing dates for submission of testimony and reply testimony and scheduling evidentiary hearings. The ACR ordered that the Commission would receive evidence in two phases: (1) Phase 1 on need issues and economic methodology; and (2) Phase 2 on environmental, routing, and other issues.<sup>8</sup>

On September 30, 2005, the Commission accepted SCE’s CPCN application as complete. The Commission held three days of evidentiary hearings on the need for DPV2 and economic methodology in Phase 1 evidentiary hearings from January 10–12, 2006. All parties in Phase 1 hearings agreed that DPV2 is cost-effective and needed.

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<sup>7</sup> CAISO, Ex. 11, Att. 6, p. 1.

<sup>8</sup> ACR, p.10 (“Evidence regarding DPV2 will be received in two phases. Phase 1 will address need issues and the economic methodology used to assess cost effectiveness, with workshops, testimony, and evidentiary hearings to be held as needed on a consolidated basis with I.05-06-041. Phase 2, in A.05-04-015 only, will address environmental, routing, and other issues related to DPV2, with evidentiary hearings to be held as needed after the Draft EIR/EIS is released.”).

**B. Procedural History: Environmental Review**

On April 11, 2005, SCE filed a Proponent's Environmental Assessment ("PEA"). The Commission retained outside consultants, Aspen Environmental Group, to prepare a Draft Environmental Impact Report ("DEIR") for the Proposed Project, and to examine the projects, and alternatives. The Commission's Energy Division ("ED") oversaw the consultant's work.

On May 4, 2006, the Commission and the BLM issued a 2000+ page DEIR. The DEIR was available for review at several local area libraries and on the project website:

<http://www.cpuc.ca.gov/Environment/info/aspen/dpv2/toc-deir.htm>. In addition, the public could request copies of the DEIR on a compact disc, or could request the separately bound Executive Summary through the mail. The Notice of Availability for the DEIR also included instructions on how, and where, to send written comments on the DEIR and when they were due.

The public had the opportunity to give oral comments on the DEIR through the Commission's public participation hearings. On June 6, 7, and 8, 2006, the Commission and BLM held a series of public workshops to explain how the public could participate in the Commission's decision-making process. Additionally, the ALJ held two public participation hearings so that interested parties could provide formal comments on the DEIR or other aspects of the Commission's proceeding.

On June 13, 2006, the Commission and BLM sent a second notice that extended the comment period on the DEIR from July 5, 2006 to August 11, 2006. The Commission scheduled an additional Public Participation Hearing for July 24, 2006.

The Commission held Phase 2 evidentiary hearings on July 10, 2006. At the hearings, the Commission received evidence on updated costs, and also environmental and routing issues related to DPV2.<sup>2</sup> Phase 2 hearings were not controversial and were not adversarial. SCE was

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<sup>2</sup> July 8, 2005 ALJ Ruling, mimeo., p. 5 ("Phase 2 in A.05-04-015 would address environmental and routing issues related to DPV2, with evidentiary hearings after the Draft EIR/EIS is released.").

the only party that submitted testimony. No party challenged SCE's testimony or cross-examined SCE witnesses.

On October 25, 2006, the Commission issued the FEIR. As discussed below, the Commission should now issue a CPCN authorizing SCE to construct DPV2.

**C. The Commission Should Now Issue a Decision Authorizing SCE to Construct DPV2**

Public Resource Code § 21100.2<sup>10</sup> requires that the Commission issue a decision certifying the Final EIRs within one year of accepting the project application as complete ("One-Year Deadline"). SCE submitted its CPCN Application to the Commission on April 11, 2005. The Commission certified the DPV2 CPCN application as complete on September 30, 2005.<sup>11</sup> Thus, it is now past September 2006 and statutory one-year deadline for the Commission to issue a decision certifying the FEIR.

It has also been two and a half years since SCE submitted DPV2 for approval at the CAISO on DPV2 in April 2004. The CAISO determined that DPV2 a cost-effective and necessary addition to the CAISO grid. All active parties at the Commission's evidentiary hearings agreed that DPV2 is cost effective and should be constructed. SCE urges the Commission to now issue a decision authorizing SCE to construct DPV2.

**III.**

**PROPOSED ROUTE**

Exhibit 40, FEIR, Volume 1, at p. ED-6 identified the environmentally superior preferred route as follows:

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<sup>10</sup> D.92-10-007, (Application of Ponderosa Telephone for a CPCN), 1992 Cal. PUC LEXIS 815 (Cal. PUC 1992) (CEQA requires a final environmental report must be completed and certified within one year from the date an application is deemed complete.) Pub. Res. Code § 21100.2(a)(1) states that "For projects described in subdivision (c) of Section 21065 (projects requiring a certificate}, each state agency shall establish, by resolution or order, time limits that do not exceed the following: (A) One year for completing and certifying environmental impact reports....") (emphasis added).

<sup>11</sup> SCE's application was deemed complete on September 30, 2005, almost five months after the application was filed, on April 11, 2005.

“Based on comparison of the environmental impacts of the Proposed Project and alternatives, the Environmentally Superior Alternative/Environmentally Preferable Alternative has been identified as follows:

- Harquahala Junction Switchyard (the project would begin at this point);
- Proposed Project route from Harquahala Junction Switchyard to east of Alligator Rock;
- Alligator Rock–North of Desert Center Alternative to west of Alligator Rock;
- Proposed Project route from west of Alligator Rock to Devers Substation; and
- Proposed West of Devers upgrades unless determined to be infeasible, in which case the Devers-Valley No. 2 Alternate would be constructed.”

Roughly following this order, SCE addresses certain issues related to the proposed route:

- Harquahala Junction vs. Harquahala Switchyard;
- Desert Southwest Transmission Project;
- Agua Caliente Band of Cahuilla Indians Allottee Land;
- Alligator Rock; and
- Devers-Valley Alternate Route.

**A. Harquahala Junction to Harquahala Switchyard — The Commission Should Allow SCE to Determine Whether to Use Harquahala Junction or Harquahala Switchyard**

For the reasons discussed below, SCE requests that the Commission allow it to choose whether to use Harquahala Switchyard or Harquahala Junction. SCE has an option agreement with the HGC that would allow SCE to acquire: (a) the Harquahala Switchyard; and (b) the existing Harquahala-Hassayampa 500 kV transmission line.



As discussed in the FEIR,<sup>12</sup> SCE's April 11, 2005, application stated that SCE prefers to terminate the eastern point of the DPV2 500 kV line at Harquahala Switchyard in Arizona. On August 17, 2005, the Arizona Corporation Commission ("ACC") certified the Arizona Public Service ("APS") TS-5 line. The ACC order stated that APS should pursue good-faith efforts to reach a commercially reasonable agreement for interconnection at either a new Arlington Valley 500 kV switchyard or at Harquahala Junction<sup>13</sup> in lieu of terminating the line at Palo Verde. Harquahala Junction involves constructing a new switchyard a few miles to the east of the Harquahala Switchyard. Like Harquahala Switchyard, Harquahala Junction is functionally the equivalent of terminating at Palo Verde.<sup>14</sup>

APS, HGC, and SCE have been discussing an arrangement where the parties would share the Harquahala-Hassayampa 500 kV transmission line. A joint project arrangement would allow APS to connect its TS-5 line at the Harquahala Junction. SCE hopes to reach an agreement with APS and HGC by the end of November 2006. As shown in late-filed Ex. 43, Attachment A, the CAISO Board approved the joint arrangement in September 2006. Terminating DPV2 at Harquahala Junction is the FEIR's preferred alternative, because it would eliminate the need for constructing the last five miles of transmission project (east of Harquahala Switchyard).<sup>15</sup>

As stated in the testimony of Mr. Tam, SCE requests the Commission allow SCE to determine which of the two options, Harquahala Junction, or Harquahala Switchyard to utilize.<sup>16</sup> The will allow SCE to comply with the orders of the ACC and the preferences of other affected entities. The route description of the proposed project, with the flexibility to terminate at either Harquahala Junction or Harquahala Switchyard, would basically be as shown in the testimony of

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<sup>12</sup> Ex. 40, FEIR, Vol. 1, pp. B-10 to B-11.

<sup>13</sup> Ex. 40, FEIR, Vol. 1, p. C-12, describes the Harquahala Junction. ("This alternative would require construction of a new switching station east of the Harquahala Generating Station, at the point where the existing Harquahala-Hassayampa and DPV1 transmission lines diverge (a location called "Harquahala Junction").

<sup>14</sup> Arizona Corporation Commission Decision No. 68063 (Certificate of Environmental Compatibility for Authorizing the Palo Verde Hub to TS-5 500 kV Transmission Line Project), dated August 17, 2005.

<sup>15</sup> Ex. 40, FEIR, Vol. 1, p. C-12.

<sup>16</sup> SCE, Tam, Ex. 33, p. 2.

Mr. Pearson,<sup>17</sup> and attached to this Opening Brief in Attachment A. Both alternative termination points have been reviewed by the FEIR. An order allowing SCE some flexibility in order to comply with other regulatory entities would be consistent with the Commission's treatment of the Jefferson-Martin project in D.04-08-046.

**B. Desert Southwest Transmission Project — SCE Will Provide Updated Information If and When an Agreement is Reached And Comply With the Commission's General Order 131-D**

At the July 10, 2006, Evidentiary Hearings, ALJ TerKeurst requested additional information on the status of the Proposed Desert Southwest Transmission Project ("DSWTP") at the U.S. Department of the Interior, Bureau of Land Management [CA-660-1430-ER-CACA-44491]. SCE provided this information in late-filed Ex. 38. The ALJ requested SCE to brief how the DSWTP affects the costs that go into rates, and the maximum allowable cost that the Commission must set under Pub. Util. Code Section 1005.5.<sup>18</sup> In this section, SCE also addresses: a) permitting requirements for a 2340 MW Joint Desert Southwest project; and b) the impact of the various route options on the parties benefit-to-cost ratios, and two issues raised by ALJ TerKeurst's October 10, 2006 e-mail, viz.:

"At the July 10, 2006 evidentiary hearing, Southern California Edison Company described that the carrying capacity of the DPV2 project could be expanded to 2,340 MW to accommodate power from the Desert Southwest Project. (See, e.g., Tr. at 450 - 451.) SCE shall address in its opening brief the permitting and other legal requirements that such an expansion would entail, as well as the status of any discussions with Desert Southwest about such a possible expansion."

By way of the background, the Imperial Irrigation District ("IID") proposes to construct a 118-mile 500 kV transmission line that would connect a new substation (referred to as Keim)

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<sup>17</sup> SCE, Pearson, Ex. 33, p. 6.

<sup>18</sup> ALJ TerKeurst, Tr. 6/455 ("This may be a subject for brief, Ms. Miller, how this all fits together for the Commission to meet its obligation to determine the--whatever the statute says the maximum allowable or maximum reasonable cost.").

near Blythe, California to SCE's Devers Substation, near Palm Springs, California. On September 15, 2006, the BLM issued a Record of Decision for the Desert Southwest Transmission Project Final Impact Statement ("ROD"). The ROD allows IID a right-of-way to use public lands to construct the 500 kV line as a separate stand-alone transmission line adjacent to the DPV2 project between the Blythe area and Devers Substation. The DSWTP right-of-way would be north of SCE's DPV1 and DPV2 right-of-way.<sup>19</sup>

If the parties reach an agreement, a joint project arrangement could potentially integrate what would otherwise be two separate, stand-alone, 500 kV transmission line projects. If a joint arrangement is reached, the agreement would be structured such that the cost to SCE would not exceed the cost of a stand-alone project. SCE Witness Cabbell testified that upgrading or "expanding" the transfer capability would probably mean upgrading the series capacitors on the line to expand the transfer capability of the line from 1200 MW to 2340 MW. The route would not change, and the cost to SCE would not change, and SCE would still turn 1200 MW of transfer capability over to the CAISO.<sup>20</sup>

In answer to the ALJ's questions about the licensing requirements for such an expansion, if a joint project arrangement is reached, it would likely involve building a new substation (Midpoint Substation). As required by the Commission's General Order 131-D, SCE would file a permit to construct the new substation. At this time, SCE believes that there is no need to conduct any additional environmental review as the BLM's NEPA analysis satisfies the environmental requirements set forth in Sections 1001, 1003.5, and 1004 et seq. of the Public Utilities Code and G.O. 131-D.

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<sup>19</sup> SCE, Pearson, Tr. 6/423. See also, ROD, p. 11 ("The 130-foot DPV2 right-of-way would be located adjacent and north of DPV1. The 180-foot DSW right-of-way would be located adjacent and north of DPV2.").

<sup>20</sup> SCE, Cabbell, Tr. 6/937 ("There wouldn't be any effect on the DPV2 project costs related to Desert Southwest project. The Desert Southwest project would pay any incremental charges or additional costs that would be associated with the project.").

Finally, DPV2 is cost-effective without a joint DSWTP project. If and when a joint project is reached, SCE can submit the Federal Energy Regulatory Commission (“FERC”) jurisdictional contract and provided updated information to the Commission.

**C. Agua Caliente Band Of Indian Allottee Land – SCE Will Consult and Cooperate with the Agua Caliente Planning Department if An Agreement is Reached with the Allottee**

In the DPV2 Phase 2 hearings, ALJ TerKeurst requested that SCE brief the issue of whether SCE exercised eminent domain over allottee land when it constructed DPV1.<sup>21</sup> In response to the ALJ’s request, SCE did exercise eminent domain over certain allottee land when it constructed DPV1, as discussed below.

In 1979, the Commission issued D. 90552, granting SCE’s request for a CPCN to construct DPV1. As noted in the FEIR, the existing DPV1 right-of-way crosses an approximately 0.1-mile stretch of land held by members of the Agua Caliente Band of Cahuilla Indians (“ACB”).<sup>22</sup> In a decision on DPV1, the Commission noted that the ACB’s tribal council opposed the use of any land within the boundaries of the reservation for a transmission line, including allotted lands. Ultimately, the Commission ordered that SCE should obtain a right-of-way through ACB allotted lands, because:<sup>23</sup>

“In its earlier review the Commission considered ACB’s arguments and authorized SCE to obtain a right-of-way through ACB allotted lands because of environmental and cost advantages. Those advantages remain unchanged. SCE has commenced {eminent domain} litigation to secure this more desirable right-of-way. An extension of time should be granted to permit SCE to secure that right-of-way.”<sup>24</sup>

Federal law provides that allotted lands may be condemned pursuant to 25 U.S.C. § 357:

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<sup>21</sup> ALJ TerKeurst, Tr. 6/462.

<sup>22</sup> FEIR, Ex. 41, p. D.4-9.

<sup>23</sup> See, D.92302, SCE CPCN for DPV1.

<sup>24</sup> D.92302, SoCal Edison Co. granted certificate to construct and operate 500 kV transmission line between Devers Substation and Palo Verde Nuclear Generating Station, Arizona, 4 CPUC2d 378 (1980).

“Lands allotted in severalty to Indians may be condemned for any public purpose under the laws of the State or Territory where located in the same manner as land owned in fee may be condemned, and the money awarded as damages shall be paid to the allottee.”<sup>25</sup>

On September 25, 1979, SCE filed an eminent domain complaint in Federal District Court pursuant to 25 U.S.C. § 357 to condemn a right-of-way to install DPV1 over allotted lands. The Federal District Court held that SCE could condemn allotted lands.<sup>26</sup> The Federal District Court followed the Ninth Circuit decision in Nicodemus v. Washington Water Power Company, 264 F.2d 614 (9th Cir. 1959), and rendered summary judgment for SCE. The ACB filed a notice of appeal.<sup>27</sup> The Ninth Circuit Court of Appeals upheld the Federal District Court’s decision, allowing SCE to condemn allotted property:

“With respect to condemnation actions by state authorities, Congress explicitly afforded no special protection to allotted lands beyond that which land owned in fee already received under the state laws of eminent domain. See 25 U.S.C. § 357. Thus, consistent with its assimilation policy, Congress placed Indian allottees in the same position as any other private landowner

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<sup>25</sup> As noted by the Federal Court in Nichodemus, cited in footnotes 25 below, under federal law, there are two ways to acquire a right-of-way across allottee lands. First, the Secretary of Interior can grant a Right-of-Way under 25 U.S.C., § 323 and the implementing regulations at 25 CFR Part 169, with the consent of the landowner (the allottee). Section 323, Title 25 U.S.C.A. provides that the Secretary of the Interior is “empowered to grant rights-of-way for all purposes, subject to such conditions as he may prescribe, over and across any lands now or hereafter held in trust by the United States for individual Indians or Indian tribes, communities, bands, or nations, or any lands now or hereafter owned, subject to restrictions against alienation, by individual Indians or Indian tribes, communities, bands, or nations, including the lands belonging to the Pueblo Indians in New Mexico, and any other lands belonging to the Pueblo Indians in New Mexico, and any other lands heretofore or hereafter acquired or set aside for the use and benefit of the Indians. The second way is to condemn the lands under 25 U.S.C. § 357.”).

<sup>26</sup> See, Southern California Edison Co. v. Rice, 685 F.2d 354, 1982 U.S. App. LEXIS 16318 (9<sup>th</sup> Cir. Cal. 1982) petition for cert. denied, Rice v. Southern California Edison, 460 U.S. 1051, 103 S. Ct. 1497, 75 L. Ed. 2d 929, 1983 U.S. LEXIS 4300, 51 U.S.L.W. 3703 (1983) (stating that “The District Court, followed the Ninth Circuit’s decision in Nicodemus v. Washington Water Power Company, 264 F.2d 614 (9th Cir. 1959), and held that Section 357 authorized condemnation of rights-of-way over the Agua Caliente allotments.”).

<sup>27</sup> Nicodemus v. Washington Water Power Co., Nicodemus v. Washington Water Power Co., 264 F.2d 614, 1959 U.S. App. LEXIS 4351 (9th Cir. Idaho 1959) (“Upholding a decision allowing a public utility to condemn land which in earlier times was part of the Coeur d’Alene Indian Reservation, but which was allotted to the appellant. Appellee, public utility, brought condemnation proceedings in the district court to condemn an easement over the property of appellant, Native American property owner, which had been allotted to her. The district court ordered condemnation of the easement and on appeal, the court affirmed the judgment ordering condemnation. 25 U.S.C.S. §§ 323, 357 offers two methods for the acquisition of an easement across allotted Native American land for the construction of power lines and appellee properly initiated the condemnation suit under § 357.”).

*vis-à-vis* condemnation actions with the interest of the United States implicated only to the extent of assuring a fair payment for the property taken and a responsible disposition of the proceeds.”<sup>28</sup>

SCE was not required to obtain a conditional use permit from the ACB when it condemned allottee lands needed for construction of DPV1. In Southern California Edison Company v. Rice, the Federal Court found that Congress “explicitly afforded no special protection to allotted lands beyond that which land owned in fee already received under the state laws of eminent domain.” Eminent domain law remains available to be utilized by SCE as necessary.<sup>29</sup>

Notwithstanding this precedent, the ACB submitted a one-page letter from the Planning Department of the ACB dated December 15, 2005, to the CPUC and BLM.<sup>30</sup> The ACB states that the “proposed alignment [of the DPV2 project] crosses the exterior boundaries of the [Agua Caliente] Reservation.” The letter states that a 1979 tribal ordinance “regulates” development of public utilities within the Reservation. The letter concludes by requesting that the CPUC and BLM impose a mitigation measure requiring SCE to be granted a conditional use permit prior to constructing DPV2. Although SCE believes that it is not required to have this conditional use permit, SCE is willing to work cooperatively with the ACB as set forth in General Order 131-D.

Exhibit 40, the FEIR at p. D.4-26 to 4-27 proposes mitigation measure L-1c for ‘mitigating’ the construction impacts:

**“REVISED Mitigation Measure L-1c (Page D.4-26 to D.4-27)**

Resolution of land acquisition issues for crossing of Agua Client Band of Cahuilla Indian Allottee Tribal lands.

SCE shall negotiate in good faith to reach a mutually acceptable agreement with the allottee. If an agreement is reached, SCE shall consult and coordinate with the Planning Department of the Agua

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<sup>28</sup> See, Southern California Edison Co. v. Rice, 685 F.2d 354, 1982 U.S. App. LEXIS 16318 (9<sup>th</sup> Cir. Cal. 1982) petition for cert. denied, Rice v. Southern California Edison, 460 U.S. 1051, 103 S. Ct. 1497, 75 L. Ed. 2d 929, 1983 U.S. LEXIS 4300, 51 U.S.L.W. 3703 (1983).

<sup>29</sup> SCE reserves the right to institute eminent domain proceedings, as it did in 1979.

<sup>30</sup> Ex. 42, FEIR, pp. A-86 to A-87.

Client to provide the information and/or fees requested by the Planning Department regarding land use matters. If SCE and the allottee reach an agreement then SCE shall notify the Planning Department of the Agua Client, and if SCE and the Planning Department agree on the legal requirements, including appropriate waivers, SCE shall notify the BLM and the Commission of the agreement. However if SCE and the Planning Department are unable to reach an agreement, SCE shall notify the Commission of the inability to reach agreement and the Commission may hold a hearing within thirty days of notification. SCE reserves the right to institute eminent domain proceedings. SCE believes that a conditional use permit is not required.”

Consistent with its obligations under the Commission General Order 131-D, Section XIV, SCE is engaged in consulting and coordinating with the Agua Caliente Planning Department regarding the right-of-way. However, SCE submits that the 1979 ACB Ordinance contains certain provisions that conflict with the public interest in siting the right-of-way. For example, Section 7.04.05 of the ACB ordinance<sup>31</sup> states that the permit will last no more than twenty-five years and may be revoked:

“A conditional use permit shall issue for a term not more than twenty-five (25) years and may be revoked if new land uses develop that are incompatible with the use for which the permit was obtained.”<sup>32</sup>

The uncertainty created by this kind of provision creates a quagmire that would make it virtually impossible for utilities to site transmission projects. The Commission adopted General Order 131-D in 1994 to address the difficulties that this type of provision creates. General Order 131-D sets forth the Commission’s regulation of transmission facilities 200 kV and above, and states that CPUC jurisdiction preempts local jurisdictions from applying local ordinances to facilities regulated by the Commission. The Commission issued G.O. 131-D to ensure that local concerns do not “impute or impair” the Commission’s authority over the placement of transmission lines:

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<sup>31</sup> See, Ex. 42, FEIR, p. A-86, August 10, 2006 letter from ACB.

<sup>32</sup> See, Ex. 42, FEIR, p. A-77.



“[W]e herein declare our intent to exercise exclusive jurisdiction over all privately owned utility electric facilities in California, and all local agencies are preempted. . . The Commission’s jurisdiction is necessary to ensure that decisions made on the basis of strictly local concerns do not impute or impair the placement of facilities necessary for the rational development of a statewide utility system. Notwithstanding this pre-emption, the Commission concurs in the staff’s traditional practice of recommending that the utilities go through the local permit process with regard to lines in instances where the Commission has not formally asserted its approval jurisdiction despite the fact that the local jurisdiction is ultimately without authority to disprove construction of the facility.”

And, as stated by Ex. 40, FEIR at p. ES-7:

“No local discretionary (e.g., use) permits are required, since the CPUC has preemptive jurisdiction over the construction, maintenance, and operation of SCE facilities in California. SCE would still have to obtain all ministerial building and encroachment permits from local jurisdictions, and the Commission’s General Order 131-D requires SCE to comply with local building, design, and safety standards to the greatest degree feasible to minimize project conflicts with local conditions.”

If the utility and a local entity are unable to resolve their differences, Section XIV of the Commission’s General Order states that the Commission will review the issues and address them:

“Where the utility and a local jurisdiction are unable to reach agreement on a utility project, the proposal is brought before the Commission for resolution. The Commission does not preempt a local jurisdiction without having reviewed the project and the local jurisdiction’s concerns.”

In sum, if SCE reaches agreement with the allottee, SCE will consult and cooperate with the ACB Planning Department to address concerns regarding voluntary compliance with local standards, per the Commission’s General Orders. If there are differences that can not be resolved, SCE shall notify the Commission and the Commission may need to address the matter.



**D. Alligator Rock: The Commission Should Allow SCE the Flexibility to Construct DPV2 Along the Route that BLM Approves**

At the July 10, 2006 Evidentiary Hearings, ALJ TerKeurst requested an estimate of the costs of the I-10 route alternative for Alligator Rock (“Alligator Rock Alternate”).<sup>33</sup> As discussed in Section VII, SCE estimates that the Alligator Rock Alternate would add an additional \$8.952 million to the cost of DPV2.

Some background may be helpful.<sup>34</sup> DPV2 crosses approximately 110.5 miles of federal land managed by the BLM. Most of the new Devers-Harquahala 500 kV transmission line would be constructed within a designated utility corridor that BLM granted to SCE for the DPV2 project in 1989. The Alligator Rock Areas of Critical Environmental Concern (“ACEC”) involves archaeological sites that were identified when SCE constructed the DPV1 transmission line. These sites are within the designated utility corridor on public lands managed by the BLM.

SCE strongly favors placing the proposed DPV2 transmission line adjacent to the existing transmission line through the Alligator Rock ACEC.<sup>35</sup> It was SCE’s original environmental surveys for DPV1 that discovered this significant archaeological site.<sup>36</sup> SCE re-routed the Devers-Palo Verde right-of-way to avoid significant features of this site, with the expectation that a second 500 kV transmission line would eventually be built here. SCE has good information on the site features associated with this ACEC, and believes that all significant features can be avoided, especially with careful construction monitoring. No comparable information exists for the Alligator Rock Alternate.

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<sup>33</sup> ALJ TerKeurst, Tr. 6/494.

<sup>34</sup> See also, Ex. 40, FEIR, pp. ES-23 to ES-24.

<sup>35</sup> SCE, Pearson, Ex. 31, p.4.

<sup>36</sup> SCE, Pearson, Tr. 6/424 (“We have a pretty good handle on what's there in Alligator Rock. It was our original surveys for Devers-Palo Verde No. 1 that discovered that resource to begin with. And if you'll notice in any of the maps that you look at, there is a little jog in the existing route for DPV1. We actually located it a little bit to the south to avoid the main features of that – that site. And we did it with provision that we'd ultimately be putting the No. 2 Line in there as well.”).

Several alternatives around Alligator Rock have been proposed in the FEIR. However, in contrast to construct the line next to the existing DPV1 line, the alternatives all involve constructing a new 500 kV transmission line in a corridor where no line currently exists.

For example, the North of Desert Center<sup>37</sup> re-route has not been surveyed, nor has right-of-way been acquired. SCE does know that the route will be longer and will require construction of new through access roads.

“Clearly, the route is longer. It's a mile and a half to two miles longer. We'd have to construct a new through access road, which we wouldn't have to do if we followed our existing route. We haven't done surveys for biological or cultural resources there, so we don't know what issues we may encounter there.”<sup>38</sup>

“And then from an operational perspective, when we do patrols of that area by vehicle it means that we are going to have to have patrolmen survey one route, then come back, survey the other route, get back on the original route for the remainder of the transmission line. So there's going to be some complications. Nothing we can't live with, but, you know, it's not as clear-cut as if the lines were together.”<sup>39</sup>

In addition, the North of Desert Center re-route around Alligator Rock will require crossing Interstate 10 twice, creating potentially significant visual impacts.

In any event the BLM must grant a permit for any alignment that the Commission approves. The Commission should give SCE the flexibility to build DPV2 on the route that is ultimately approved by the BLM. Otherwise, there may be a timing issue if the BLM issues its ROD order after the Commission issues its order on the DPV2 CPCN application.

For example, in Decision No. 96-04-068, granting Sierra Pacific a CPCN for the Alturas 500 kV transmission line (from Alturas California, to Reno Nevada),<sup>40</sup> the Commission approved a route that was different than the one that the BLM later adopted. The BLM's ROD, issued one

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<sup>37</sup> See, Ex. 40, FEIR, p. ES-23.

<sup>38</sup> SCE, Pearson, Tr. 6/424.

<sup>39</sup> SCE, Pearson, Tr. 6/424.

<sup>40</sup> In the matter of Sierra Pacific for CPCN for Alturas Transmission Line Project, D.96-04-068, 66 CPUC 2d 46 (1996).

month after the Commission issued its order granting Sierra Pacific a CPCN, rejected a portion of the route that the Commission approved, and instead adopted a different route. The Commission modified its CPCN order, reasoning that it is established fact that it is not feasible to construct a project if the United States (BLM) will not permit it. As the Alturas decision illustrates, it is not feasible for a utility to construct a transmission line if the United States will not permit it. Therefore, SCE requests the Commission's order give SCE the flexibility to construct DPV2 along the route that BLM ultimately approves.

**E. The Commission Should Issue a Decision Adopting the Devers-Valley No. 2 Alternate Route**

Ex. 40, FEIR at p. ES-66, states that the environmentally preferred alternate includes: “Proposed West of Devers upgrades unless determined to be infeasible, in which case the Devers-Valley No. 2 Alternate would be constructed.” (Emphasis added.)

SCE's CPCN application described the proposed construction of upgrades to four of SCE's existing 230 kV transmission lines that are located west of the Devers Substation (“West of Devers Upgrades”). SCE's existing 230 kV transmission lines currently cross over lands of the Morongo Band of Mission Indians (“Tribe”), pursuant to several existing right-of-way agreements between SCE and the Tribe. These right-of-way agreements begin to expire in 2010.

The Tribe has informed SCE that the proposed West of Devers Upgrades are not acceptable.<sup>41</sup> On May 4, 2006, the Commission and the BLM issued a Draft EIR/EIS

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<sup>41</sup> See, SCE, Starck, Ex. 37, p. 7. (While stating the CPCN application had proposed West of Devers Upgrades that crosses over the existing lands of the Tribe, the Tribe has informed SCE that continued use of these lands is not acceptable. However, the Tribe has expressed the willingness to negotiate an agreement for an entirely new right-of-way corridor that would be located some distance away from the existing West of Devers Substation corridor. A new right-of-way corridor as suggested by the Tribe would cross less of the reservation and more privately owned land. SCE and the Tribe are making good-faith efforts to identify such a new right-of-way corridor. Following development of a new right-of-way corridor and right-of-way agreement, such agreement would be subject to approvals by the Morongo Tribal Council, Tribal membership, and the Bureau of Indian Affairs. SCE remains committed to continuing negotiations with the Tribe for a new right-of-way that would address SCE's continuing needs for transmission. SCE anticipates that the negotiations with the Tribe will need to continue independently of the DPV2 project licensing schedule. This will allow the parties sufficient time to reach a mutually acceptable agreement.)

(hereinafter “DEIR”) that evaluated an alternate route to SCE’s proposed West of Devers Upgrades. This alternate required construction of a new Devers-Valley No. 2, 500 kV transmission line from the Devers Substation to the Valley Substation. The DEIR states that the Devers-Valley No. 2 Alternate would “avoid impacts associated with traversing high-density residential areas and tribal lands”. The DEIR also notes the “potential legal feasibility challenges of the West of Devers segment over Morongo Tribal lands” and that the Devers-Valley No. 2 Alternate would eliminate “the impacts of all West of Devers Upgrades”.<sup>42</sup> The DEIR concludes that Devers-Valley No. 2 Alternate would meet the objectives of the DPV2 project and is feasible.

SCE has evaluated the Devers-Valley No. 2 Alternate and agrees that it is an acceptable and viable alternate to the West of Devers Upgrades. Because the Tribe has informed SCE that its proposed West of Devers Upgrades are not acceptable, SCE has concluded that such upgrades are not feasible. Accordingly, SCE recommends that the Commission adopt the Devers-Valley No. 2 Alternate in lieu of the West of Devers Upgrades.<sup>43</sup> Adoption of the Devers-Valley No. 2 Alternate will not only allow for completion of the DPV2 project within the current licensing schedule, it will allow SCE and the Tribe to continue to negotiate a new right-of-way agreement independent of the DPV2 licensing schedule.

For all the above reasons, the Commission should issue a decision authorizing SCE to construct the Devers-Valley No. 2 Alternate.

#### IV.

#### **ENVIRONMENTAL ANALYSIS**

As required by CEQA, the Commission can not approve DPV2 unless it finds that the project has been modified to mitigate or avoid each significant effect on the environment or that specific considerations make the mitigation measures or alternates identified in the FEIR

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<sup>42</sup> PEA, Executive Summary, Section 2.2.2.

<sup>43</sup> See, SCE, Starck, Ex. 31, p. 8.

infeasible, and that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.<sup>44</sup> In this section, SCE addresses mitigation measures recommended by the FEIR.

Due to the fact that the FEIR was not issued until October 25, 2006, SCE has not had a great deal of time to review the FEIR. SCE notes that many of SCE's suggested comments to mitigation measures were not incorporated. SCE comments on two mitigation measures that, to SCE's knowledge, were never required for DPV1 or by the original DPV2 CPCN. SCE recommends certain modifications to the FEIR's mitigation measures be adopted by the Commission, and included in an Addendum to the FEIR, as was the Commission's practice in D.04-08-046 the Commission's order granting a CPCN for the Jefferson-Martin Transmission Project.

Finally, SCE recommends in this section that the Commission certify the FEIR.

**A. The Commission Should Modify APM L-7 to Make Clear it Addresses Relocating Residences for Land Use Issues and Not Corona Noise**

Ex. 41, FEIR, Vol. 2 at p. D.8-21, Table D.8-13, APM L-7 states that: "SCE proposed that, due to mitigated noise, SCE proposed to purchase a parcel of land or if practical, relocate or adjust transmission line towers".

"APM No. L-7 Link 10 crosses an (unoccupied) single-family dwelling unit at Milepost 5.3. Two additional single-family dwelling units and one mobile home would be impacted due to the alignment of Link 10 at Milepost 6.2. Mitigation measures would include purchase of the parcel and relocation or, if practical, adjusting the transmission line alignment and placing towers to avoid the affected dwelling units. (SCE)."

SCE requests that Mitigation Measure APM-L-7 be revised to clarify that SCE proposed that, due to land use issues, SCE may have to purchase or condemn certain property:

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<sup>44</sup> See, D.04-08-046, (PG&E Jefferson Martin CPCN), mimeo., p. 116.

“APM No. L-7 Link 10 crosses an (unoccupied) single-family dwelling unit at Milepost 5.3. Two additional single-family dwelling units and one mobile home would be impacted due to the alignment of Link 10 at Milepost 6.2. Mitigation measures due to land-use issues would include purchase or condemnation of the parcel ~~and relocation~~ or, if practical, adjusting the transmission line alignment and placing towers to avoid the affected dwelling units.”

SCE originally suggested APM L-7 as a land-use issue mitigation measure, as DPV2 transmission line may cross over parcels in Link 10, such that SCE may have to purchase the property (or exercise its powers of eminent domain). SCE did not mean to imply that it would or could ‘relocate’ homeowners to mitigate Corona noise. It would not be feasible, and the Commission should not require SCE to “relocate” homeowners (who may not want to be relocated) due to Corona noise.

Changing the subject slightly, SCE disagrees that there will be significant noise impact due to Corona noise. The FEIR states that a 65 db threshold CNEL noise level is used Riverside County Noise Ordinances, basically to determine if new buildings should be permitted in that area.<sup>45</sup> Exhibit 42 has incorrectly used SCE’s proposed measure (to purchase property if the line goes across the parcel) to conclude that SCE has agreed or proposed to “relocate” certain residences if noise levels in backyards (of up to four residential structures along the Devers-Harquahala, and 25 structures along the Devers-Valley route) have noise levels above 65 Ldn or CNEL.<sup>46</sup>

In late-filed Ex. 38, SCE explains why it disagrees that the noise level would be above 65 db. SCE originally provided data responses with the “L5” noise level (the level that would be exceeded no more than for 5 percent of the time). In Ex. 38, SCE demonstrated that recent CNEL forecasts in Riverside County are based upon the L50 noise level, the level that would be exceeded no more than 50 percent of the time. The L50 noise level for DPV2 is 54 db or a CNEL noise level of 61.4 db. 61.4 db is well below the 65 db Riverside County threshold.

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<sup>45</sup> Ex. 42, p. E-184.

<sup>46</sup> The FEIR states that there is a Class I (significant) impact to residences within of 25 feet of the ROW.

**B. The Commission Should Modify Mitigation Measure B-16a On Raven Control To Place Reasonable Limitations on the Program Cost and Scope**

Exhibit 40, FEIR states on page D.2-171 Mitigation Measure B-16a that SCE should implement a raven control plan to control ravens that nest on all transmission line companies that conduct operations with the ROW:

**“B-16a Prepare and implement a raven control plan.** SCE shall prepare a common raven control plan that identifies the purpose of conducting raven control, provides training in how to identify raven nests and how to determine whether a nest belongs to a raven or a different raptor species, describes the seasonal limitations on disturbing nesting raptors species (excluding ravens), describes the procedure for obtaining a permit from the USFWS’s Division of Migratory Birds, and describes procedures for documenting the activities on an annual basis. SCE shall gain approval of the plan from the USFWS’s Division of Migratory Birds. SCE shall provide this raven control plan to all transmission line companies that conduct operations within the ROW.”

SCE requests that this mitigation be modified as follows:

**“B-16a Contribute to an agency sponsored raven reduction plan for the California desert.** SCE will work with the Bureau of Land Management and the USFWS to reduce raven populations in the desert by contributing to an agency-sponsored raven reduction program for the California Desert. The amount of contribution shall be commensurate with the expected contribution of raven nesting resulting from the DPV2 transmission line.”

SCE requests this mitigation be modified for a number of reasons. The original wording of this mitigation measure places SCE in a position of accepting an infeasible mitigation measure with unlimited scope and expenditure, to be implemented on “all transmission line companies”.<sup>47</sup> SCE believes that compliance with the unmodified mitigation measure, to the extent it is even feasible, may be counterproductive and have little or no measurable benefits. At the outset, the

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<sup>47</sup> Ex. 42, FEIR at p. E-13 (the FEIR response was that the raven control program would have to be developed in coordination with the USFWS, they left this mitigation measure as is. (“This measure does not identify nor set an exact schedule for the removal of nests. Removing raven nests would require coordination with the USFWS as indicated in the mitigation measure. Therefore, Mitigation Measure B-16a has not been revised.”).

Commission should not impose mitigation conditions to be applied to existing transmission lines (owned by SCE and other transmission owners that are not the subject of this application). The existing adjacent transmission line already provide nests for ravens. There is likely to be no reduction in raven nesting activity by removing raven nests from towers on DPV2, when there is no raven control on the adjacent towers.

As stated on Ex. 43, FEIR Volume 3, at p. E-85, SCE believes the raven control may not even be feasible. SCE has had significant experience with nesting birds on its power lines, including ravens. Removing a raven nest has to be done when there are eggs on the nest, and no young chicks or fledglings. This is difficult because raven nesting is seasonally dependent, and varies depending on how much rain has occurred, what the prey base or food source looks like, temperature, etc. Under favorable conditions ravens, may nest two or more times in the same year. SCE's experience has been that ravens will often rebuild a nest as soon as it is taken down.

In any event, SCE is not in the business, and does not want to be placed in a position of killing birds and their chicks, either on DPV2, or on other transmission lines.<sup>48</sup> For all the above reasons, SCE requests that, at minimum, the Commission revise Mitigation Measure B16-a to place some reasonable limitations on what SCE could be required to do for this program. SCE suggests that it could contribute to an agency-sponsored raven control plan with the amount of SCE's contribution to be commensurate with the expected benefits of controlling raven nesting.

**C. The Commission Should Certify the FEIR and, If Necessary, Include a Statement of Overriding Considerations**

The FEIR must contain specific information according to the CEQA Guidelines Sections 15120 through 15132.<sup>49</sup> The FEIR contains revisions in response to comments and

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<sup>48</sup> SCE has found that it is difficult to find rehabilitation centers willing to take raven chicks.

<sup>49</sup> Cal. Admin. Code Sections 15122-131.



other information received. Exhibit 42, FEIR Volume II, contains the comments received on the DEIR and individual responses to those comments.<sup>50</sup>

The Commission must conclude that the FEIR is in compliance with CEQA before granting a CPCN. The document should embody “an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors.”<sup>51</sup> It must be prepared in a clear format and in plain language.<sup>52</sup> Most importantly, it must be “organized and written in such a manner that [it] will be meaningful and useful to decisionmakers and the public.”<sup>53</sup>

SCE believes the FEIR meets these tests. As such, the Commission should certify the FEIR for DPV2.

If the Commission determines that the adopted mitigation measures reduce the environmental effects of the approved project to less than significant levels, no Statement of Overriding Consideration is needed. On the other hand, if the Commission determines that a Statement of Overriding Consideration is needed, the Commission should include the overriding considerations. If the Commission believes that a Statement of Overriding Considerations is needed, SCE has provided suggested language in Attachment B.

## V.

### **SCE COMPLIES WITH D.06-01-042, THE COMMISSION’S RECENT POLICY DECISION ON ELECTRIC AND MAGNETIC FIELD ISSUES**

Exhibit 42, FEIR Vol. 2, pp. D.10-26 through 10-59 addresses electric and magnetic field (“EMF”) concerns. This section of the FEIR explicitly “does not consider magnetic fields in the context of CEQA/NEPA and determination of environmental impact, first because there is no agreement among scientists that EMF creates a potential health risk, and second because there

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<sup>50</sup> CEQA Guidelines Section 15132.

<sup>51</sup> *Id.*, Section 15142.

<sup>52</sup> *Id.*, Sections 15006(q) and (r), 15120, 15140.

<sup>53</sup> Pub. Res. Code Section 21003(b).

are no defined or adopted CEQA/NEPA standards for defining health risk from EMF. As a result, EMF information is simply presented for the benefit of the public and decisionmakers.”<sup>54</sup> The FEIR reviews and refers to D.06-01-042, the Commission’s most recent decision on the EMF policy.<sup>55</sup> The FEIR concludes that SCE has complied with the Commission’s orders on EMF by incorporating low-cost and no-cost measures, per D.06-01-042:

“The CPUC has implemented, and recently re-confirmed, a decision requiring utilities to incorporate “low-cost” or “no-cost” measures for managing EMF from power lines. SCE’s Proposed Project does incorporate low-cost and no-cost measures as mitigation for magnetic fields.”<sup>56</sup> (Emphasis added).

At the July 10, 2006 Evidentiary Hearings, ALJ TerKeurst requested that SCE work with the Energy Division to develop information regarding the feasibility and cost of mitigating the magnetic fields associated with the 500 kV configuration, including the Devers-Valley route alternative, in particular, and any residences that may be on the Palo Verde-Devers segment of the line with that mitigation consisting of increasing the tower heights such that the magnetic field would be reduced on the right-of-way next to the DPV2 line by 15 percent, and specifically:

1. How much taller do the proposed 500 kV towers need to be in order to reduce magnetic field levels by 15 percent for residences within 200 feet of the edge (closer to the proposed transmission line) of the 500 kV right-of-way (“ROW”)?
2. What is the estimated cost for using taller structures, which will give at least 15 percent magnetic field reductions at the one edge of the ROW for those residences?

SCE provided the requested information as late-filed Ex. 38.

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<sup>54</sup> Ex. 41, FEIR, Vol. 2, p. D.10-26.

<sup>55</sup> Ex. 41, FEIR at p. D.10-40 (“Most recently the CPUC issued Decision D.06-01-042, on January 26, 2006, affirming the low-cost/no-cost policy to mitigate EMF exposure from new utility transmission and substation projects. This decision also adopted rules and policies to improve utility design guidelines for reducing EMF. The CPUC stated “at this time we are unable to determine whether there is a significant scientifically verifiable relationship between EMF exposure and negative health consequences.” The CPUC has not adopted any specific limits or regulation on EMF levels related to electric power facilities.”).

<sup>56</sup> Ex. 41, FEIR at p. D.10-55.

SCE recommends the CPUC keep the tower (and conductor) heights as proposed by SCE; that is, the proposed tower type and height should match the adjacent “existing” Devers-Palo Verde or Devers-Valley 500 kV transmission lines, where feasible. To reduce magnetic field levels by 15 percent or more at the edge of the ROW, SCE would need to raise about thirty-three towers by 20 feet or more. The estimated incremental cost to perform this work is approximately \$1.4 million, (including P&B, A&G, and AFUDC). SCE has complied with the Commission’s orders on EMF by incorporating low-cost and no-cost measures, per D.06-01-042. Raising the towers an additional 20 feet over the height of the existing towers would create visual and biological impacts, and would conflict with many of the BLM Applicant Proposed and CPUC recommended mitigation measures, as discussed in late-filed Ex. 38.<sup>57</sup>

## VI.

### **SCE HAS COMPLIED WITH PUBLIC UTILITIES CODE SECTION 625**

Pub. Util. Code § 625 provides that a public utility that offers competitive services may not condemn any property for the purpose of competing with another entity unless the Commission finds that such an action would serve the public interest based on a hearing for which the owner of the property to be condemned has been noticed and the public has an opportunity to participate (Pub. Util. Code § 625(a)(1)(A)). However, an exception is made for condemnation actions that are necessary solely for an electric or gas company to meet a Commission-ordered obligation to serve. In that circumstance, the electric or gas company is required to provide notice on the Commission Calendar if and when it pursues installation of facilities for the purposes of providing competitive services (Pub. Util. Code § 625(a)(1)(B)).

SCE proposed the DPV2 project to meet SCE’s obligation to serve its electric customers.<sup>58</sup> The DPV2 project includes new fiber optic cable to provide internal communication links for line protection purposes but SCE has no current intention to use this

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<sup>57</sup> See, Ex. SCE, Ex. 38, Att. A, pp. A-7 to A-8.

<sup>58</sup> See, SCE, Burhenn, Ex. 31, p. 15.

fiber optic cable for competitive purposes or to lease it. Therefore, Section 625 does not apply. If, in the future, SCE were to desire to lease property which involved condemnation for competitive purposes, SCE would provide notice in the Commission calendar as specified in Pub. Util. Code §625(a)(a)(B).

## VII.

### **PROJECT COSTS -- THE COMMISSION SHOULD USE SCE'S ESTIMATES**

#### **SUBJECT TO ADJUSTMENT PER PUB. UTIL. CODE § 1005.5(B)**

For projects estimated to cost more than \$50,000,000, Pub. Util. Code § 1005.5 directs the Commission to “specify in the certificate a maximum cost determined to be reasonable and prudent for the facility.” The active parties in the proceeding, including DRA, the CAISO, and TURN, did not dispute SCE cost estimates. The Commission should therefore use SCE’s cost-estimate as the basis for the amount the Commission determines to be the maximum and prudent cost for DPV2. Table 1 below shows the project costs for the proposed and alternate routes.

***Table 1 (from Exhibit 31)  
Summary of Proposed and Alternate Routes  
(Includes P&B, A&G, and AFUDC)***

Proposed Devers Harquahala and West of Devers	\$624.412 million
Alternate 1 Harquahala West Alternative	\$609.823 million
Alternate 2 Palo Verde Alternative	\$600.777 million
Alternate 3 Harquahala Junction Alternative <u>and</u> Devers-Valley No. 2	\$565.013 million
Alternate 4 Devers-Valley No. 2 Alternative	\$589.299 million

ALJ TerKeurst requested that SCE provide updated benefit-to-cost ratios for each alternate shown in Table 1, and provide the updated cost associated with the proposed route and each of the alternates. SCE derived updated benefit-to-cost by using simple arithmetic to adjust the ratios by the updated costs shown in Table 1. In late-filed Exhibit 43, SCE also provided

“updated” benefit/cost ratios for the CAISO and the DRA, again, adjusted using simple arithmetic to reflect the updated costs. The costs have not been controversial, and the general consensus is that the estimates that SCE has provided are sufficiently accurate for the purposes of determining cost-effectiveness. In an overabundance of caution, SCE reviewed benefit/cost information in late-filed Exhibit 43 with DRA and CAISO for their review prior to submitting it to the Commission.

The costs shown in Table 1 are the sum of real (2005 dollars) capital costs (with AFUDC, P&B, and A&G). The costs shown in Table 2 are the 2005 present value of revenue requirements (to be consistent with the benefit-to-cost ratios presented in Phase I and in SCE’s April 11, 2005, CPCN application). Table 3 presents DRA cost-effectiveness estimates for CAISO’s presentation was a little more complex as CAISO provided four “viewpoints” for benefits, as it believes that no single point estimate can adequately capture a project’s value.<sup>59</sup> Therefore, SCE includes four tables for updated CAISO cost estimates.

***Table 2 (from Exhibit 38)***  
***Summary of Cost Effectiveness - SCE***  
***2005 PV of Revenue Requirements (\$1,000s)***

	<b>SCE Benefits*</b>	<b>Costs</b>	<b>Net Benefits</b>	<b>B-C Ratio</b>
Proposed	\$1,104,673	\$645,607	\$459,066	1.71
Alternate 1	\$1,104,673	\$657,552	\$447,120	1.68
Alternate 2	\$1,104,673	\$634,558	\$470,115	1.74
Alternate 3	\$1,104,673	\$594,213	\$510,460	1.86
Alternate 4	\$1,104,673	\$625,139	\$479,533	1.77
*Source: SCE – The costs shown in Table II-1 are the sum of real (2005 dollars) capital costs (with AFUDC, P&B and A&G). The costs shown in Table II-2 are the 2005 present value of revenue requirements (to be consistent with the benefit-to-cost ratios presented in Phase I and in SCE’s April 11, 2005 CPCN application). SCE, Exhibit 38, August 1, 2006.				

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<sup>59</sup> CAISO, Ex. 11, Att. 6, p. 1.

**Table 3 (from Exhibit 43)**  
**Summary of Cost Effectiveness - DRA**  
**2005 PV of Revenue Requirements (\$1,000s)**

	<b>DRA Benefits*</b>	<b>Costs</b>	<b>Net Benefits</b>	<b>B-C Ratio</b>
Proposed	\$907,483	\$645,607	\$261,876	1.41
Alternate 1	\$907,483	\$657,552	\$249,931	1.38
Alternate 2	\$907,483	\$634,558	\$272,925	1.43
Alternate 3	\$907,483	\$594,213	\$313,270	1.53
Alternate 4	\$907,483	\$625,139	\$282,344	1.45
<p>*Source: See DRA, Ex. 18, Table B-5 of DRA's DPV2 Testimony, Vol. 2 of 3, Appendix B, November 22, 2005. Does not include additional benefits of DPV2, such as contingency benefits estimated to be an additional \$389,550 – 2005 NPV (Table B-6 of the same report).</p>				

**Table 4 (from Exhibit 43)**  
**Summary of Cost Effectiveness - CAISO**  
**Levelized Revenue Requirement**  
**(2008 dollars in \$1,000s)**

<b>CAISO RATEPAYER LMP &amp; CONTRACT PATH</b>				
	<b>CAISO Benefits**</b>	<b>Costs*</b>	<b>Net Benefits</b>	<b>B-C Ratio</b>
Proposed	\$225,000	\$67,337	\$157,663	3.34
Alternate 1	\$225,000	\$68,583	\$156,417	3.28
Alternate 2	\$225,000	\$66,184	\$158,816	3.40
Alternate 3	\$225,000	\$61,976	\$163,024	3.63
Alternate 4	\$225,000	\$65,202	\$159,798	3.45
<p>*Source: See CAISO, Ex. 11, Attachment 6, SCE's estimated costs levelized using footnote 11 of the CAISO's report to their Board, February 2005 (10.43%) for the "Real Economic Carrying Charge for Transmission".</p> <p>**Source: CAISO, Ex. 11, Attachment 6, Table 1, p. 2.</p>				

**Table 5 (from Exhibit 43)**  
**Summary of Cost Effectiveness - CAISO**  
**Levelized Revenue Requirement**  
**(2008 dollars in \$1,000s)**

<b>CAISO RATEPAYER (LMP ONLY)</b>				
	<b>CAISO Benefits**</b>	<b>Costs*</b>	<b>Net Benefits</b>	<b>B-C Ratio</b>
Proposed	\$84,000	\$67,337	\$16,663	1.25
Alternate 1	\$84,000	\$68,583	\$15,417	1.22
Alternate 2	\$84,000	\$66,184	\$17,816	1.27
Alternate 3	\$84,000	\$61,976	\$22,024	1.36
Alternate 4	\$84,000	\$65,202	\$18,798	1.29
<p>*Source: See CAISO, Ex. 11, Attachment 6, SCE's estimated costs levelized using footnote 11 of the CAISO's report to their Board, February 2005 (10.43%) for the "Real Economic Carrying Charge for Transmission".</p> <p>**Source: CAISO, Ex. 11, Attachment 6, Table 1, p. 2.</p>				

**Table 6 (from Exhibit 43)**  
**Summary of Cost Effectiveness - CAISO**  
**Levelized Revenue Requirement**  
**(2008 dollars in \$1,000s)**

<b>ENHANCED WECC OR MODIFIED SOCIETAL</b>				
	<b>CAISO Benefits**</b>	<b>Costs*</b>	<b>Net Benefits</b>	<b>B-C Ratio</b>
Proposed	\$119,000	\$67,337	\$51,663	1.77
Alternate 1	\$119,000	\$68,583	\$50,417	1.74
Alternate 2	\$119,000	\$66,184	\$52,816	1.80
Alternate 3	\$119,000	\$61,976	\$57,024	1.92
Alternate 4	\$119,000	\$65,202	\$53,798	1.83
<p>*Source: Levelized SCE's estimated costs using footnote 11 of the CAISO's report to their Board, February 2005 (10.43%).</p> <p>**Source: CAISO, Ex. 11, Attachment 6, Table 1, p. 2.</p>				

**Table 7 (from Exhibit 43)**  
**Summary of Cost Effectiveness - CAISO**  
**Levelized Revenue Requirement**  
**(2008 dollars in \$1,000s)**

<b>WECC OR SOCIETAL</b>				
	<b>CAISO Benefits**</b>	<b>Costs*</b>	<b>Net Benefits</b>	<b>B-C Ratio</b>
Proposed	\$91,000	\$67,337	\$23,663	1.35
Alternate 1	\$91,000	\$68,583	\$22,417	1.33
Alternate 2	\$91,000	\$66,184	\$24,816	1.37
Alternate 3	\$91,000	\$61,976	\$29,024	1.47
Alternate 4	\$91,000	\$65,202	\$25,798	1.40
<p>*Source: See CAISO, Ex. 11, Attachment 6, SCE's estimated costs levelized using footnote 11 of the CAISO's report to their Board, February 2005 (10.43%) for the "Real Economic Carrying Charge for Transmission".</p> <p>**Source: CAISO, Ex. 11, Attachment 6, Table 1, p. 2.</p>				

Alternate 3, shown in Table 1, as \$565.013 million would be the least-cost alternate, and is for Harquahala Junction Alternative and Devers-Valley No. 2. The option is only feasible if SCE, APS, and HGC reach agreement on a joint project arrangement to build Harquahala Junction. In the event that SCE, APS, and HGC do not reach an Agreement, SCE will use Alternate 4. Because the Commission is approving a maximum reasonable and prudent cost, as discussed below, SCE requests the Commission use the cost for Alternate 4--\$589.299 million--for the Devers-Valley No. 2 Alternative (using Harquahala Switchyard). Additionally, if the Commission orders SCE to route DPV2 around Alligator Rock, that would add an additional \$8.952 million to the cost of DPV2.

No party disputed SCE's estimates through any means, testimony or cross-examination. SCE based its cost-estimates on preliminary design work, as detailed cost-estimates have only been completed for some components. The full detailed engineering and cost-estimates have not



yet been completed. Additionally, some of the environmental EMF measures and real property-related values<sup>60</sup> may not have been fully developed at this time. In developing the estimates, SCE has included reasonable allowances and contingency factors. Upon completion of the final, detailed engineering, design-based construction estimates for the approved project, SCE will submit the final estimate to the Commission consistent with the practices for other CPCNs, as discussed below.

In D.04-08-046, the Commission recognized that the Federal Energy Regulatory Commission will ultimately decide how much of the costs the utility may reflect in transmission rates.<sup>61</sup> SCE recognizes that the Commission believes that the Commission is obligated by Pub. Util. Code § 1005.5(a)<sup>62</sup> to specify “a maximum amount determined to be reasonable and prudent for the facility”. This ‘reasonable amount’ has been called a ‘cost cap’ even though the Commission has in fact recognized that the costs submitted in a CPCN Application are based on preliminary design estimates, and that after the CPCN is granted, the cost estimates will be adjusted based on the route selected by the Commission, the final engineering design, environmental mitigation requirements, and other factors.

Pub. Util. Code § 1005.5(b) specifically allows the utility applicant to seek additional cost recovery beyond that originally set forth in the CPCN Application after the decision granting the CPCN has been issued.<sup>63</sup> For example, if the BLM or Commission imposes significant mitigation measures, the utility may make, and the Commission should address, an

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<sup>60</sup> For example, SCE’s estimates do not include the effect of Proposition 90 (Eminent Domain Law Reform).

<sup>61</sup> D.04-08-046 (“Jefferson-Martin CPCN”) mimeo., p. 127 (“While FERC will ultimately decide how much of the costs for this project PG&E may recoup in transmission rates, we believe our cost cap has bearing on the amount PG&E may seek from FERC.”).

<sup>62</sup> Pub. Util. Code § 1005.5(a) provides that: “Whenever the commission issues to an electrical . . . corporation a certificate authorizing the new construction of any addition to or extension of the corporation's plant estimated to cost greater than fifty million dollars (\$50,000,000), the commission shall specify in the certificate a maximum cost determined to be reasonable and prudent for the facility.”

<sup>63</sup> As set forth in Pub. Util. Code § 1005.5(b): “After the certificate has been issued, the corporation may apply to the commission for an increase in the maximum cost specified in the certificate. The commission may authorize an increase in the specified maximum cost if it finds and determines that the cost has in fact increased and that the present or future public convenience and necessity require construction of the project at the increased cost; otherwise, it shall deny the application.” (Pub. Util. Code, § 1005.5, subd. (b).)

appropriate request for an increase in the cost cap pursuant to Pub. Util. Code § 1005.5(b). In addition, SCE proposes the use of deflation factors to convert actual expenditures in future years to their equivalent value in 2005 dollars. SCE believes the deflation factors should be calculated using an index such as the Handy-Whitman Index of Public Utility Construction Costs and considering other factors that have significant influence on the cost of the project.

SCE requests that the Commission include language in its decision similar to that in D.88-12-030, the Commission’s first decision granting a CPCN for DPV2.<sup>64</sup> Specifically, the Commission should authorize SCE to seek adjustments based on changes in cost estimates, once SCE completes final, detailed design-based construction estimates due to:

- a. adjustments in project costs because of any unanticipated delays in starting the project or inflation;
- b. adjustments in project costs as a result of final design criteria; and
- c. additional project costs resulting from the adopted mitigation measures (and mitigation monitoring programs).

The Commission has previously recognized the need for adjustments to cost caps in other decisions granting CPCNs. For example, the 1988 decision adopting an estimate of the maximum reasonable and prudent cost for the Devers-Palo Verde 2 project<sup>65</sup> and more recently the decision on PG&E’s Jefferson-Martin 230 kV transmission project<sup>66</sup> both allowed for adjustments to the estimate of maximum reasonable cost. As the Commission stated in PG&E’s Jefferson-Martin 230 kV Transmission Project decision:

“If the final estimate exceeds the cost cap we have adopted, then PG&E is free to exercise its rights to seek an increase in the cost cap pursuant to 1005.5(b).”<sup>67</sup>

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<sup>64</sup> The Commission stated that SCE could seek “any adjustments in adopted project costs due to: (1) anticipated delays in starting the project or inflation, (2) final design criteria, and (3) the adopted mitigation measures and mitigation monitoring program.” (D.88-12-030, Ordering Paragraph 12.)

<sup>65</sup> Southern California Edison Co., D.88-12-030, 30 CPUC 2d 4 at 40 (1988).

<sup>66</sup> Pacific Gas and Electric Co., D.04-08-046 at 132 (2004).

<sup>67</sup> *Id.*

SCE requests that the certificate recognize that SCE may request an increase in the maximum reasonable and prudent cost estimate. This is appropriate because, in setting the maximum reasonable cost, the Commission is to take several factors into consideration, including:

“the design of the project, the expected duration of construction, an estimate of the effects of economic inflation, and any known engineering difficulties associated with the project.”<sup>68</sup>

The estimates that SCE has provided may change due to permitting and environmental requirements, adopted mitigation measures, route changes, final design criteria, changes in the project start date, inflation, and other unforeseen events. The legislature provided that utilities may “apply to the [C]ommission for an increase in the maximum cost specified in the certificate.”<sup>69</sup> The Commission should authorize an increase if the project is cost-effective at the increased cost.

Again, the Commission will specify, and may modify, the estimate of maximum reasonable cost, but FERC will ultimately determine the amounts recovered in transmission rates for DPV2 as a network transmission facility. This is because DPV2 will provide interstate transmission service. Therefore, the reasonableness of costs and the associated ratemaking and revenue requirement will be under the jurisdiction of FERC. Although FERC has this responsibility, the Commission “routinely file[s] as an intervener in the proceedings at FERC.”<sup>70</sup> Therefore, the estimate of maximum reasonable cost specified by the Commission should be subject to adjustment as required by Section 1005.5(b) so that the Commission’s position in its intervention in proceedings at FERC may be consistent with the reasonable costs of the facility. In that situation, it will also be important for the Commission to have adjusted the maximum reasonable cost as conditions change.

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<sup>68</sup> Pub. Util. Code § 1005.5(a).

<sup>69</sup> Pub. Util. Code § 1005.5(b).

<sup>70</sup> Resolution E-3930 at 4 (May 26, 2005).

**VIII.**

**CONCLUSION**

For all the above reasons, SCE requests that the Commission make the findings in SCE's Summary of Recommendations, and find that the public convenience and necessity requires DPV2.

Respectfully submitted,

MICHAEL MACKNESS  
JULIE A. MILLER

/s/ Julie A. Miller  
By: Julie A. Miller

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Attorneys for  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770  
Telephone: (626) 302-4017  
Facsimile: (626) 302-2610  
E-mail: julie.miller@sce.com

November 6, 2006

## **ATTACHMENT A**

### **OVERVIEW OF PROPOSED PROJECT**

SCE requests the Commission find that it is reasonable to allow SCE to determine which of the two options, Harquahala Junction, or Harquahala Switchyard to utilize. For clarity, SCE provides the following route description.

SCE's proposed DPV2 route would depart from either the Harquahala Switchyard or the proposed Harquahala Junction. If it departs from the Harquahala Switchyard, it would proceed easterly paralleling the existing Harquahala-Hassayampa 500 kV line for approximately five miles to its intersection with SCE's existing DPV1 route at the site of the proposed Harquahala Junction. At this point, whether the route departs from the Harquahala Switchyard or Harquahala Junction the route would be the same. The route would then turn north and parallel the DPV1 line approximately 2.7 miles where it crosses I-10 and proceeds to a point 1 mile north of Burnt Mountain. The route then turns westerly, then southwesterly, and parallels DPV1 and to a point about 25 miles where it meets the El Paso Natural Gas Company's ("EPNG") existing pipeline. At this point, the route generally parallels the EPNG pipeline and DPV1 line across the Ranegras Plain, the KOFA National Wildlife Reserve, La Posa Plain, Arizona Highway 95, through the Dome rock Mountain to the summit of Copper Bottom Pass. The route then turns southwesterly and descends the western slope of the Dome Rock Mountains on 13 double-circuit towers and proceeds to a crossing of the Colorado River.

Upon crossing the Colorado River, the route leaves enters California and passes into the Palo Verde Valley, five miles south of Blythe, California. The route parallels the DPV1 line westerly to the top of the Palo Verde Mesa and then proceeds northwesterly to a point two miles south of I-10 and five miles southwest of Blythe Airport. At this point, the route proceeds westerly and parallel to I-10 and the DPV1 line including crossing or going around the Alligator Rock ACEC about 63 miles to a point in Shavers Valley where it turns northerly and crosses I-10

about two miles east of the Cactus City Rest Stop. After crossing I-10, the route parallels the DPV1 line for the remaining 46 miles to the Devers Substation.

The route would leave the Devers Substation in a westerly direction paralleling SCE's existing Devers-Valley No. 1 line. The route would cross into the San Bernardino National Forest and the Santa Rosa and San Jacinto Mountains National Monument and generally parallel the Devers-Valley No. 1 line westerly until it terminate at SCE's Valley Substation.

**ATTACHMENT B**

**SUGGESTED LANGUAGE FOR  
STATEMENT OF OVERRIDING CONSIDERATIONS**

[See D.88-12-030, 30 CPUC 2d 4 (1988) Decision granting SCE a CPCN to construct original DPV2 project, Finding of Fact No. 26, Statement of Overriding Considerations.]

Pursuant to the State of California CEQA Guidelines, the Commission finds that the benefits of the project outweigh the adverse impacts and that the project should be approved. The Project will parallel existing transmission lines minimizing the need for new access roads and associated ground disturbing impacts.

(a) DPV2 will result in significant environmental effects on geology, soils and hydrology, biological resources, land use and planning, visual, acoustic and Native American cultural resources.

(b) The mitigation measures proposed in the FEIR and adopted in this decision reduce most of the environmental impacts of DPV2 to an insignificant level.

(c) After all feasible mitigation measures are employed, the proposed project still poses a risk of significant impacts on Native American resources, agricultural activities in the Blythe area and on the habitat of several rare or endangered species.

(d) None of these residual impacts can be mitigated to insignificant levels by feasible modifications of design, construction, or operating characteristics of the proposed project.

(e) Several project alternatives were considered, including “no-project” alternatives.

(f) The residual impacts of the proposed project cannot be mitigated by selecting an acceptable alternative.

(g) Any remaining environmental impacts are outweighed by the beneficial effects of the proposed project.

(h) Our overriding considerations for approving the construction of DPV2 are the substantial economic benefits of the project, coupled with the economic infeasibility of

alternatives, and inability of most environmentally preferred alternatives to meet project objectives.

The Commission finds that there is substantial evidence in the record that demonstrates economic, legal, social, technological, or other reasons for approving this project. There is substantial evidence in the record to determine that the benefits of the project outweigh the adverse impacts.

Specific social, economic, legal, social, technological, or other reasons for approving this project, which outweigh the unavoidable adverse environmental effects identified in FEIR are as follows:

1. **Necessary and Cost-effective:** That DPV2 will be cost-effective for California electricity customers as demonstrated by the independent economic analyses of SCE and DRA. The CAISO conducted an independent review of DPV2 and also found the DPV2 project to be a necessary and cost-effective addition to the CAISO controlled grid
2. **Increase California's Transmission Import Capability.** That DPV2 will increase California's transmission import capability by 1,200 MW providing greater access to sources of low-cost energy currently operating in the Southwest.
3. **Enhance the Competitive Energy Market.** That DPV2 will enhance competition amongst energy suppliers by increasing access to the California energy market, providing siting incentives for future energy suppliers, and providing additional import capability.
4. **Support the Energy Market in the Southwest.** That DPV2 would expand the Western Electricity Coordinating Council (WECC) interstate regional transmission network and would increase the ability for California and the Southwest to pool resources, and provide emergency support in the event of generating unit outages or natural disasters.
5. **Provide Increased Reliability, Insurance Value, and Operating Flexibility.** That DPV2 would improve the reliability of the regional transmission system, providing insurance against major outages such as the loss of a major generating facility or of another high-voltage transmission line.
6. **Minimal Environmental Impacts:** That DPV2 will parallel existing transmission lines minimizing the need for new access roads and associated ground disturbing impacts.



The Commission has reviewed and considered the FEIR and has considered the identified mitigation measures and alternatives, and finds that this documents is adequate for our decision-making purposes under CEQA.

## **CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **OPENING BRIEF OF THE SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) ON PHASE 2 ISSUES ON THE DEVERS-PALO VERDE NO. 2 TRANSMISSION LINE PROJECT** on all parties identified on the attached service list(s). Service was effected by one or more means indicated below:

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First-class mail will be used if electronic service cannot be effectuated.

Executed this **6<sup>th</sup> day of November, 2006**, at Rosemead, California.

/s/ Sara Carrillo

Sara Carrillo, Project Analyst  
SOUTHERN CALIFORNIA EDISON COMPANY

2244 Walnut Grove Avenue  
Post Office Box 800  
Rosemead, California 91770



**A.05-04-015**

Monday, November 6, 2006

JIM VILLA ABRILLE  
296 MEADOW VALLEY RANCH  
UNIT 2  
ELKO, NV 89801  
A.05-04-015

CASE ADMINISTRATION  
CASE ADMINISTRATION  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVE., RM. 370  
ROSEMEAD, CA 91770  
A.05-04-015

JANICE ALWARD  
ARIZONA CORPORATION COMMISSION  
1200 WEST WASHINGTON  
PHOENIX, AZ 85007-2996  
A.05-04-015

GREG BARNES  
ATTORNEY AT LAW  
SEMPRA ENERGY  
101 ASH STREET  
SAN DIEGO, CA 92101  
A.05-04-015

C. SUSIE BERLIN  
ATTORNEY AT LAW  
MC CARTHY & BERLIN, LLP  
100 PARK CENTER PLAZA, SUITE 501  
SAN JOSE, CA 95113  
A.05-04-015

Billie C Blanchard  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
AREA 4-A  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

SHANISE M. BLACK  
DEPUTY CITY ATTORNEY  
LOS ANGELES DEPARTMENT OF  
WATER&POWER  
111 NORTH HOPE STREET, ROOM 340  
LOS ANGELES, CA 90012  
A.05-04-015

TRACI L BONE  
STAFF COUNSEL  
CALIFORNIA PUBLIC UTILITIES  
COMMISSION  
505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

PETER BRAY  
PETER BRAY AND ASSOCIATES  
3566 17TH STREET, SUITE 2  
SAN FRANCISCO, CA 94110-1093  
A.05-04-015

ANDREW B. BROWN  
ELLISON, SCHNEIDER & HARRIS, LLP  
2015 H STREET  
SACRAMENTO, CA 95814  
A.05-04-015

JOHN D & MARY P BUTTLER  
2953 BRIDGEVIEW DR.  
GAINESVILLE, GA 30507-8355  
A.05-04-015

Scott Cauchois  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ROOM 4209  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

ED CHANG  
FLYNN RESOURCE CONSULTANTS, INC.  
2165 MOONSTONE CIRCLE  
EL DORADO HILLS, CA 95762  
A.05-04-015

LAURENCE CHASET  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ROOM 5131  
SAN FRANCISCO, CA 94102-3214-3214  
A.05-04-015

MARGARET H. CLAYBOUR  
WINSTON & STRAWN LLP  
1700 K ATREET, N.W.  
WASHINGTON, DC 20006  
A.05-04-015

BRIAN T. CRAGG  
ATTORNEY AT LAW  
GOODIN MACBRIDE SQUERI RITCHIE & DAY  
LLP  
505 SANSOME STREET, SUITE 900  
SAN FRANCISCO, CA 94111  
A.05-04-015

DEAN F. DENNIS  
HILL, FARRER & BURRILL LLP  
300 SOUTH GRAND AVENUE  
LOS ANGELES, CA 90071-3147  
A.05-04-015

Robert Elliott  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
AREA 4-A  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

**A.05-04-015**

Monday, November 6, 2006

GLENN ELSSMANN  
MISSION DEVELOPMENT COMPANY SUITE  
C  
25814 BUSINESS CENTER DR.  
REDLANDS, CA 92374  
A.05-04-015

DIANE I. FELLMAN  
ATTORNEY AT LAW  
FPL ENERGY, LLC  
234 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102  
A.05-04-015

MICHEL PETER FLORIO  
SENIOR ATTORNEY  
THE UTILITY REFORM NETWORK (TURN)  
711 VAN NESS AVENUE, SUITE 350  
SAN FRANCISCO, CA 94102  
A.05-04-015

BARRY R. FLYNN  
FLYNN RESOURCE CONSULTANTS, INC.  
5440 EDGEVIEW DRIVE  
DISCOVERY BAY, CA 94514  
A.05-04-015

THOMAS FLYNN  
CALIFORNIA PUBLIC UTILITIES  
COMMISSION  
770 L STREET, SUITE 1050  
SACRAMENTO, CA 95814  
A.05-04-015

GEORGE FORMAN  
ATTORNEYS AT LAW  
FORMAN & ASSOCIATES  
4340 REDWOOD HIGHWAY, SUITE F228  
SAN RAFAEL, CA 94903  
A.05-04-015

BRUCE FOSTER  
REGULATORY AFFAIRS  
SOUTHERN CALIFORNIA EDISON COMPANY  
601 VAN NESS AVENUE, STE. 2040  
SAN FRANCISCO, CA 94102  
A.05-04-015

DARRELL FREEMAN  
1304 ANTRIM DR.  
ROSEVILLE, CA 95747  
A.05-04-015

KEN GLICK  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET, MS-14  
SACRAMENTO, CA 95814  
A.05-04-015

JUDY GRAU  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET MS-46  
SACRAMENTO, CA 95814-5512  
A.05-04-015

JEFFREY P. GRAY  
ATTORNEY AT LAW  
DAVIS WRIGHT TREMAINE  
505 MONTGOMERY STREET  
SAN FRANCISCO, CA 94111-6533  
A.05-04-015

KAREN GRIFFIN  
EXECUTIVE OFFICE  
CALIFORNIA ENERGY COMMISSION  
1516 9TH STREET, MS 39  
SACRAMENTO, CA 95814  
A.05-04-015

JEFFERY D. HARRIS  
ATTORNEY AT LAW  
ELLISON & SCHNEIDER  
2015 H STREET  
SACRAMENTO, CA 95814-3109  
A.05-04-015

MARK HESTERS  
CALIFORNIA ENERGY COMMISSION  
1519 9TH STREET, MS 46  
SACRAMENTO, CA 95814  
A.05-04-015

LON W. HOUSE  
ENERGY ADVISOR  
ASSOCIATION OF CALIFORNIA WATER  
AGENCIES  
4901 FLYING C ROAD  
WATER & ENERGY CONSULTING BLACK  
MESA TRUST AND TO'NIZH ONI'ANI'  
CAMERON PARK, CA 95682-9615  
A.05-04-015

Aaron J Johnson  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ROOM 5205  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

MARC D. JOSEPH  
ATTORNEY AT LAW  
ADAMS BROADWELL JOSEPH & CARDOZO  
601 GATEWAY BLVD., STE. 1000  
SOUTH SAN FRANCISCO, CA 94080  
A.05-04-015

JOHN KALISH  
UNITED STATES BUREAU OF LAND  
MANAGEMENT  
PO BOX 581260  
PO BOX 581260  
PALM SPRINGS, CA 92258  
A.05-04-015

**A.05-04-015**

Monday, November 6, 2006

ROBERT KARGOLL  
PACIFIC GAS AND ELECTRIC CO.  
77 BEALE ST., MC B13L RM. 1317  
SAN FRANCISCO, CA 94105  
A.05-04-015

CHRISTOPHER C. KEMPLEY  
CHIEF COUNSEL  
ARIZONA CORPORATION COMMISSION  
1200 W. WASHINGTON STREET  
PHOENIX, AZ 85007  
A.05-04-015

Robert Kinoshian  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ROOM 4205  
SAN FRANCISCO, CA 94102-3214-3214  
A.05-04-015

GRANT KOLLING  
SENIOR ASSISTANT CITY ATTORNEY  
CITY OF PALO ALTO  
250 HAMILTON AVENUE, 8TH FLOOR  
PALO ALTO, CA 94301  
A.05-04-015

DAVID T. KRASKA  
ATTORNEY AT LAW  
PACIFIC GAS & ELECTRIC COMPANY  
MAILCODE B30A, PO BOX 7442  
SAN FRANCISCO, CA 94120-7442  
A.05-04-015

JIM KRITIKSON  
KRITIKSON & ASSOCIATES, INC.  
1997 VIA ARROYO  
LA VERNE, CA 91750  
A.05-04-015

BERNARD LAM  
PACIFIC GAS AND ELECTRIC COMPANY  
77 BEALE STREET, ROOM 1323  
SAN FRANCISCO, CA 94105  
A.05-04-015

J. RICHARD LAUCKHART  
GLOBAL ENERGY  
2379 GATEWAY OAKS DRIVE, STE 200  
SACRAMENTO, CA 95833  
A.05-04-015

CLARE LAUFENBERG GALLARDO  
CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET MS 46  
SACRAMENTO, CA 95814  
A.05-04-015

Diana L. Lee  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ROOM 4300  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

SUSAN V. LEE  
ASPEN ENVIRONMENTAL GROUP  
235 MONTGOMERY STREET, ROOM 935  
SAN FRANCISCO, CA 94104  
A.05-04-015

JOHN W. LESLIE  
ATTORNEY AT LAW  
LUCE, FORWARD, HAMILTON & SCRIPPS,  
LLP  
11988 EL CAMINO REAL, SUITE 200  
SAN DIEGO, CA 92130  
A.05-04-015

KENNETH LEWIS  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ENERGY DIVISION ROOM 4002  
SAN FRANCISCO, CA 94102-3214-3214  
A.05-04-015

DONALD C. LIDDELL  
DOUGLASS & LIDDELL  
2928 2ND AVENUE  
SAN DIEGO, CA 92103  
A.05-04-015

Scott Logan  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
OFFICE OF RATEPAYER ADVOCATES  
ROOM 4209  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

DAVID MARCUS  
ADAMS BROADWELL & JOSEPH  
PO BOX 1287  
BERKELEY, CA 94701-1287-1287  
A.05-04-015

WILLIAM B. MARCUS  
JBS ENERGY, INC.  
311 D STREET, SUITE A  
WEST SACRAMENTO, CA 95605  
A.05-04-015

TERESA MARTIN-POTTS  
1275 WEST WASHINGTON STREET  
PHOENIX, AZ 85007  
A.05-04-015

**A.05-04-015**

Monday, November 6, 2006

MARTIN A. MATTES  
ATTORNEY AT LAW  
NOSSAMAN GUTHNER KNOX & ELLIOTT,  
LLP  
50 CALIFORNIA STREET, 34TH FLOOR  
Jack in the Box, Inc  
SAN FRANCISCO, CA 94111-4799  
A.05-04-015

CHRISTOPHER MAYER  
MODESTO IRRIGATION DISTRICT  
PO BOX 4060  
MODESTO, CA 95352-4060-4060  
A.05-04-015

BARRY F MCCARTHY  
ATTORNEY AT LAW  
MCCARTHY & BERLIN, LLP  
100 PARK CENTER PLAZA, SUITE 501  
SAN JOSE, CA 95113  
A.05-04-015

MARY MCKENZIE  
CALIFORNIA PUBLIC UTILITIES  
COMMISSION  
505 VAN NESS AVE  
CALIFORNIA STATE BUILDING  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

BRUCE MCLAUGHLIN  
BRAUN & BLAISING P.C.  
8066 GARRYANNA DRIVE  
CITRUS HEIGHTS, CA 95610  
A.05-04-015

JACK MCNAMARA  
MACK ENERGY COMPANY  
PO BOX 1380  
AGOURA HILLS, CA 91376-1380-1380  
A.05-04-015

KEVIN R. MCSPADDEN  
MILBANK,TWEED,HADLEY&MCCLOY LLP  
601 SOUTH FIGUEROA STREET, 30TH  
FLOOR  
LOS ANGELES, CA 90017  
A.05-04-015

JULIE A MILLER  
ATTORNEY AT LAW  
SOUTHERN CALIFORNIA EDISON COMPANY  
2244 WALNUT GROVE AVENUE  
ROSEMEAD, CA 91770  
A.05-04-015

KAREN NORENE MILLS  
ATTORNEY AT LAW  
CALIFORNIA FARM BUREAU FEDERATION  
2300 RIVER PLAZA DRIVE  
SACRAMENTO, CA 95833  
A.05-04-015

STEVE MUNSON  
VULCAN POWER COMPANY  
1183 NW WALL STREET, SUITE G  
BEND, OR 97701  
A.05-04-015

KEVIN O'BEIRNE  
SAN DIEGO GAS & ELECTRIC COMPANY  
8330 CENTURY PARK COURT (CP32B)  
SAN DIEGO, CA 92123-1530  
A.05-04-015

STEVE OLEA  
ASST. DIRECTOR OF UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION  
1200 W. WASHINGTON STREET  
PHOENIX, AZ 85007  
A.05-04-015

Marion Peleo  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
LEGAL DIVISION ROOM 4107  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

ROL PFEIFER  
ASSISTANT CITY ATTORNEY  
CITY OF SANTA CLARA  
1500 WARBURTON AVE.  
SANTA CLARA, CA 95050  
A.05-04-015

MICHAEL PORTER  
PACIFIC GAS AND ELECTRIC COMPANY  
77 BEALE ST., MAIL CODE B9A  
SAN FRANCISCO, CA 94105  
A.05-04-015

Grant Rosenblum  
STAFF COUNSEL  
ELECTRICITY OVERSIGHT BOARD  
151 BLUE RAVINE ROAD  
FOLSOM, CA 95630  
A.05-04-015

EDWARD SANDFORD  
5169 HAWLEY ROAD  
SAN DIEGO, CA 92116  
A.05-04-015

Brian D. Schumacher  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
AREA 4-A  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

**A.05-04-015**

Monday, November 6, 2006

STEVEN S. SCHLEIMER  
DIR. OF MARKET & REGULATORY AFFAIRS  
CALPINE CORPORATION  
3875 HOPYARD ROAD, SUITE 345  
PO BOX 11749  
PLEASANTON, CA 94588-1749  
A.05-04-015

EARL NICHOLAS SELBY  
ATTORNEY AT LAW  
LAW OFFICES OF EARL NICHOLAS SELBY  
418 FLORENCE STREET  
PALO ALTO, CA 94301-1705  
A.05-04-015

ORVETT W. SHELBY  
C/O RACHELLE SHELBY LOMAS  
8601 BIRCH LEAF COURT  
SACRAMENTO, CA 95828-5001  
A.05-04-015

LINDA Y. SHERIF  
ATTORNEY AT LAW  
CALPINE CORPORATION  
3875 HOPYARD RD. SUITE 345  
PLEASANTON, CA 94588  
A.05-04-015

KEN SIMS  
SILICON VALLEY POWER  
1601 CIVIC CENTER DR. NO. 201  
SANTA CLARA, CA 95050  
A.05-04-015

GLORIA D. SMITH  
ADAMS, BROADWELL, JOSEPH & CARDOZO  
601 GATEWAY BLVD., SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080  
A.05-04-015

ROBIN SMUTNY-JONES  
CALIFORNIA ISO  
151 BLUE RAVINE ROAD  
FOLSOM, CA 95630  
A.05-04-015

JAN STRACK  
8316 CENTURY PARK COURT, CP52A  
SAN DIEGO, CA 92123-1582  
A.05-04-015

DANIEL SUURKASK  
WILD ROSE ENERGY SOLUTIONS, INC.  
430 8170 50TH STREET  
EDMONTON, AB T6B 1E6  
CANADA  
A.05-04-015

RENEE SWITZKY  
1534 VIA VERDE AVENUE  
PALMDALE, CA 93550  
A.05-04-015

PAUL A. SZYMANSKI  
ATTORNEY AT LAW  
SAN DIEGO GAS & ELECTRIC COMPANY  
101 ASH STREET  
SAN DIEGO, CA 92101  
A.05-04-015

Charlotte TerKeurst  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
ROOM 5021  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015

ROBERT VANDERWALL  
GRANITE CONSTRUCTION COMPANY  
38000 MONROE ST.  
INDIO, CA 92203  
A.05-04-015

JULIAN VESELKOV  
PO BOX 580453  
PO BOX 580453  
NORTH PALM SPRINGS, CA 92258  
A.05-04-015

DEVRA WANG  
STAFF SCIENTIST  
NATURAL RESOURCES DEFENSE COUNCIL  
111 SUTTER STREET, 20TH FLOOR  
SAN FRANCISCO, CA 94104  
A.05-04-015

EDDIE WANG  
GLORIUS LAND COMPANY, LLC  
13181 CROSSROADS PARKWAY, LLC SUITE  
530  
CITY OF INDUSTRY, CA 91746  
A.05-04-015

WILLIAM W. WESTERFIELD, III  
ATTORNEY AT LAW  
ELLISON, SCHNEIDER & HARRIS L.L.P.  
2015 H STREET  
SACRAMENTO, CA 95814  
A.05-04-015

Keith D White  
CALIF PUBLIC UTILITIES COMMISSION  
505 VAN NESS AVENUE  
AREA 4-A  
SAN FRANCISCO, CA 94102-3214  
A.05-04-015



**A.05-04-015**

Monday, November 6, 2006

KEITH WHITE  
931 CONTRA COSTA DRIVE  
EL CERRITO, CA 94530  
A.05-04-015

JOSEPH F. WIEDMAN  
GOODIN MACBRIDE SQUERI RITCHIE &  
DAY,LLP  
505 SANSOME STREET, SUITE 900  
SAN FRANCISCO, CA 94111  
A.05-04-015

OSA L. WOLFF  
ATTORNEY AT LAW  
SHUTE, MIHALY & WEINBERGER LLP  
396 HAYES STREET  
SAN FRANCISCO, CA 94102  
A.05-04-015

LAURIE A. WOODALL  
ASSISTANT ATTORNEY GENERAL  
1275 W. WASHINGTON  
PHOENIZ, AZ 85007  
A.05-04-015

KEVIN WOODRUFF  
WOODRUFF EXPERT SERVICES  
1100 K STREET, SUITE 204  
SACRAMENTO, CA 95814  
A.05-04-015

JASON YAN  
PACIFIC GAS AND ELECTRIC COMPANY  
77 BEALE STREET, MAIL CODE B13L  
SAN FRANCISCO, CA 94105  
A.05-04-015

PERRY ZABALA  
257 VIENNA DRIVE  
MILPITAS, CA 95035  
A.05-04-015

HENRY ZAINIGER  
ZECO, INC.  
9959 GRANITE CREST COURT  
GRANITE BAY, CA 95746  
A.05-04-015

LEGAL & REGULATORY DEPARTMENT  
CALIFORNIA ISO  
151 BLUE RAVINE ROAD  
FOLSOM, CA 95630  
A.05-04-015

CALIFORNIA ENERGY MARKETS  
517 B POTRERO AVENUE  
SAN FRANCISCO, CA 94110-1431  
A.05-04-015